

INTER-AMERICAN CONVENTION ON INTERNATIONAL TRAFFIC IN MINORS (B-57)

Adopted at Mexico, D.F., Mexico, on March 18, 1994, at the Fifth Inter-American Specialized Conference on Private International Law (CIDIP-V)

The States Parties to this Convention,

CONSIDERING the importance of ensuring comprehensive and effective protection for minors, through appropriate mechanisms to guarantee respect for their rights;

AWARE that the international traffic in minors is a universal concern;

TAKING INTO CONSIDERATION conventions on international protection of minors, particularly the provisions of Articles 11 and 35 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989;

CONVINCED of the need to regulate civil and penal aspects of the international traffic in minors; and

REAFFIRMING the importance of international cooperation to achieve effective protection of the best interests of minors,

Have agreed upon the following:

CHAPTER ONE GENERAL PROVISIONS

Article 1

The purpose of the present Convention, with a view to protection of the fundamental rights of minors and their best interests, is the prevention and punishment of the international traffic in minors as well as the regulation of its civil and penal aspects.

Accordingly, the States Parties to this Convention undertake to:

- a) ensure the protection of minors in consideration of their best interests;
- b) institute a system of mutual legal assistance among the States Parties, dedicated to the prevention and punishment of the international traffic in minors, as well as adopt related administrative and legal provisions to that effect; and
- c) ensure the prompt return of minors who are victims of international traffic to the State of their habitual residence, bearing in mind the best interests of the minors.

Article 2

This Convention shall apply to any minor who is habitually resident in a State Party or is located in a State Party at the time when an act of international traffic occurs in respect of him or her.

For the purpose of the present Convention:

- a) "Minor" means any human being below the age of eighteen.
- b) "International traffic in minors" means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.
- c) "Unlawful purpose" includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.

d) "Unlawful means" includes, among others, kidnaping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.

Article 3

This Convention shall also cover the civil aspects of the wrongful removal, transfer, or retention of minors internationally, not dealt with by other international conventions on this subject.

Article 4

To the extent possible, States Parties shall cooperate with States that are not Parties in preventing and punishing international traffic in minors, and in protecting and caring for minors who are victims of that wrongful act.

The competent authorities of a State Party are to notify the competent authorities of a State that is not a Party whenever a minor is within its territory who has been a victim of international traffic in minors in a State Party.

Article 5

For the purposes of the present Convention, each State Party shall designate a Central Authority and shall inform the General Secretariat of the Organization of American States of that designation.

A federal State, or a State in which several legal systems apply, or a State with autonomous territorial units may designate more than one Central Authority, specifying the legal or territorial area covered by each of them. The State making use of this possibility shall designate the Central Authority to which all communications should be addressed.

Should a State Party designate more than one Central Authority, it shall so inform the General Secretariat of the Organization of American States.

Article 6

States Parties shall protect the minor's interests with a view to ensuring that all procedures applied pursuant to the present Convention shall remain confidential.

CHAPTER TWO PENAL ASPECTS

Article 7

The States Parties undertake to adopt effective measures, under their domestic law, to prevent and severely punish the international traffic in minors defined in this Convention.

Article 8

The States Parties to the present Convention undertake to:

a) assist each other promptly and expeditiously through their Central Authorities, as permitted by the domestic laws of each State and by applicable international treaties, to conduct judicial and administrative proceedings, to take evidence, and to take any other procedural steps that may be necessary for fulfilling the objectives of this Convention;

b) establish through their Central Authorities mechanisms for the exchange of information about any domestic statute, case law, administrative practices, statistics and modalities regarding international traffic in minors in their States; and

c) order such measures as may be necessary to remove any obstacles that might affect the enforcement of this Convention in their States.

Article 9

The following shall have competence in cases of crimes involving international traffic in minors:

- a) the State Party where the wrongful conduct occurred;
- b) the State Party that is the habitual residence of the minor;
- c) the State Party in which the alleged offender is located if said offender has not been extradited.
- d) the State Party in which the minor who is a victim of said traffic is located.

For the purposes of the preceding paragraph, the State Party that first conducted formal proceedings concerning the wrongful act shall have preference.

Article 10

If one of the States Parties where extradition is subject to the existence of a treaty receives a request for extradition from a State Party with which it has no such treaty, or if it has such a treaty, this crime is not among the extraditable offenses, it may consider the present Convention as the legal grounds needed to grant extradition in the case of the international traffic in minors.

Further, States Parties that do not make extradition conditional on the existence of a treaty shall recognize the international traffic in minors as a basis for extradition between them. Where no extradition treaty exists, extradition shall be subject to the other conditions required by the domestic laws of the requested State.

Article 11

The actions taken in accordance with the provisions of this chapter shall not prevent the competent authorities of the State Party where the minor is located from ordering, at any time, said minor's immediate return to the State of his or her habitual residence, bearing in mind the best interests of the minor.

CHAPTER III CIVIL ASPECTS

Article 12

A request for locating and returning a minor under the present Convention shall be lodged by those entitled to do so by the laws of the State where the minor habitually resides.

Article 13

The judicial or administrative authorities of the State Party of the minor's habitual residence, or those of the State Party where the minor is or is assumed to be retained, shall be competent to hear the request for the minor's location and return, at the option of the complainants.

When in the complainants' view there are urgent reasons, the request may be submitted to the judicial or administrative authorities of the State Party where the wrongful act occurred.

Article 14

The request for locating and returning shall not require authentication and shall be processed through the Central Authorities or directly through the competent authorities referred to in Article 13 of the present Convention. The requested authorities shall decide upon the most expeditious procedures for effecting it.

After receiving the request, the requested authorities shall order the necessary steps taken in accordance with their domestic laws to initiate, facilitate, and assist the judicial and administrative procedures involved in locating and returning the minor. In addition, steps shall be taken to ensure the immediate return of the minor, and where necessary, to ensure his or her care, custody or provisional guardianship, depending on the circumstances, and, as a preventive measure, to bar the minor from being wrongfully removed to another State.

The request, stating grounds for location and return of the minor, shall be lodged within one hundred and twenty days after the wrongful removal or retention of the minor has been detected. If the request for location and return is lodged by a State Party, the latter shall do so within one hundred and eighty days.

When it is necessary to take action before locating the minor, the above-mentioned period shall run from the day on which a person or authority entitled to file the request is informed that the minor has been located.

Irrespective of the above, the authorities of the State Party where the minor is retained may at any time order his or her return if it is in the minor's best interests.

Article 15

The authentication or similar formalities otherwise required shall be unnecessary when requests for cooperation encompassed by this Convention are transmitted via consular or diplomatic channels or via the Central Authorities, and when conveyed directly from one tribunal to another in the border area of the States Parties. No authentication in the requesting State Party shall be required in the case of related documents returned via the same channels.

Where necessary, the requests shall be translated into the official language or languages of the State Party to which they are addressed. With respect to attachments, a translation of the summary of the essential information shall suffice.

Article 16

Having confirmed that a victim of traffic in minors is present within their jurisdiction, the competent authorities of a State Party shall take such immediate measures as may be necessary for the minor's protection, including those of a preventive nature to ensure that the minor is not improperly removed to another State.

The Central Authorities shall inform the competent authorities of the State of the minor's previous habitual residence of all such measures. The intervening authorities shall take such steps as may be necessary to keep the persons or authorities seeking the minor's location and return duly informed of the measures adopted.

Article 17

In keeping with the purposes of this Convention, the Central Authorities of the States Parties shall exchange information and cooperate with their competent judicial and administrative authorities on all matters concerning control of the entry of minors into and departure from their territories.

Article 18

Adoptions and other similar legal proceedings performed in a State Party shall be subject to annulment if they had their origin or purpose in international traffic in minors.

In such annulment, the minor's best interests shall be taken into account at all times.

The annulment shall be subject to the law and the competent authorities of the State where the adoption or legal proceedings concerned took place.

Article 19

Care or custody of a minor may be revoked whenever it has its origin or purpose in the international traffic in minors, under the same conditions provided for in the preceding article.

Article 20

A request for locating and returning a minor may be lodged without prejudice to the annulment and revocation actions provided for in Articles 18 and 19.

Article 21

In any proceeding provided for under this chapter, the competent authority may order the person or organization responsible for international traffic in minors to pay the costs and expenses of locating and returning the minor if such person or organization is a party to the proceeding.

A person or authority lodging a request for the return or, where applicable, the competent authority may bring a civil action to recover costs, including legal fees and the expenses of locating and returning the minor, unless said costs were already assessed in a criminal proceeding or a proceeding under this chapter.

The competent authority or any injured person or authority may bring a civil action for damages against the persons or organizations responsible for the international traffic in minors involving the minor.

Article 22

The States Parties shall adopt the measures needed to ensure that no costs are charged for proceedings to secure the return of the minor, in accordance with their laws and shall advise persons legitimately interested in the return of the minor of the public defender services, benefits to the needy and other forms of free legal aid to which they may be entitled under the laws and regulations of the respective States Parties.

CHAPTER IV

Final Clauses

Article 23

Each State Party may, at the time of signature, ratification, or accession to the present Convention or at any time thereafter, declare that it will recognize and execute criminal judgments handed down in other States Parties in respect of awards of damages resulting from the international traffic in minors.

Article 24

In the case of a State which has two or more systems of law applicable in different territorial units with respect to matters covered by the Convention, any reference to:

a) the law of the State shall be construed as referring to the law in the territorial unit in question;

b) habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

c) the competent authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit.

Article 25

If a State has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective ninety days after the date of their receipt.

Article 26

Each State Party may, at the time of signature, ratification or accession to the present Convention or at any time thereafter, declare that it will not entertain in any civil suit a

challenge to the existence of the facts of the crime or the guilt of the person convicted when a conviction has been handed down for this crime in another State Party.

Article 27

The competent authorities in border areas of the States Parties may, at any time, directly agree on more expeditious procedures to locate and return minors than those provided for in the present Convention and without prejudice thereto.

None of the provisions in the present Convention shall be interpreted as restricting the more favorable practices that the competent authorities of the States Parties may agree to follow for the matters covered by this Convention.

Article 28

This Convention shall be open to signature by the member states of the Organization of American States.

Article 29

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 30

This Convention shall remain open for accession by any other State after it has entered into force. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 31

Each State may, at the time of signature, ratification or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the purposes and objectives of this Convention.

Article 32

None of the provisions in this Convention shall be construed as limiting other bilateral or multilateral treaties or other agreements entered into between the Parties.

Article 33

This Convention shall enter into force for the ratifying States on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 34

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State.

Article 35

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of the Organization and the States that have acceded to the Convention of the

signatures, deposits of instruments of ratification, accession and denunciation, as well as of reservations, if any, and of their withdrawal.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, do hereby sign the present Convention.

DONE AT MEXICO, D.F., MEXICO, this eighteenth day of March, one thousand nine hundred and ninety-four.